Supreme Court, U. S.
FILED
DEC 29 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1018

WILLIAM L. DELAY,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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TABLE OF CONTENTS

	PAGE
CITATION TO THE OPINION BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
STATUTE AND CONSTITUTIONAL PROVISION INVOLVED	3
STATEMENT OF THE CASE	4
HOW FEDERAL QUESTION IS PRESENTED	6
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	16
APPENDICES:	
1—Judgment and Sentence of the Circuit Court of Sangamon County, Illinois	1a
2—Opinion of the Appellate Court of Illinois	3a
3—Order of the Supreme Court of Illinois Denying Leave to Appeal	10a

LIST OF AUTHORITIES

Cases

Holdridge v. United States, 282 F.2d 302 (CA 8, 1960) 11, 14
Lambert v. California, 355 U.S. 225 (1957) 12
Morissette v. United States, 342 U.S. 246 (1952) 8, 9, 10, 11, 14, 15
United States v. Dotterweich, 320 U.S. 277 (1943) 14
United States v. Freed, 401 U.S. 601 (1971) 11, 14
United States v. United States Gypsum Co., ... U.S. ....., 98 S.Ct. 2864 (1978) 8, 9, 10, 11, 14, 15

Other Authorities

14th Amendment to the Constitution of the United States 3, 7
Article I, Sec. 2 of the Illinois Constitution 7
28 U.S.C. § 1257(3) 2
Ch. 38, Sec. 17-3(a)(1) (Ill. Rev. Stat. 1977) 5
Ch. 38, Sec. 1005-8-1(b)(5) (Ill. Rev. Stat. 1977) 12
Ch. 95½, p. 1333 (Ill. Rev. Stat. 1977) 9
Ch. 95½, Sec. 4-105(e) (Ill. Rev. Stat. 1977, Volume 2, p. 1333) 3, 5, 7
Ch. 95½, Sec. 4-108(b) (Ill. Rev. Stat. 1977) 12

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No.

WILLIAM L. DELAY,

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vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Petitioner, WILLIAM L. DELAY, prays that a Writ of Certiorari issue to review the Judgment of the Illinois Supreme Court entered on October 1, 1979, and the judgment of the Illinois Appellate Court entered on April 19, 1979 in the above entitled cause.

CITATION TO THE OPINION BELOW

The order of the Illinois Supreme Court denying the petitioner leave to appeal, printed in the Appendix attached hereto, *infra* page 10a, is unreported at present. The opinion of the Illinois Appellate Court herein is reported at 70 Ill. App. 3d 712, 27 Ill. Dec. 267, 388 N.E.2d 1316.

JURISDICTION

The opinion and judgment of the Illinois Appellate Court were filed and entered on April 19, 1979. There was no request for a rehearing. The petitioner filed a petition for leave to appeal in the Illinois Supreme Court. That petition was denied on October 1, 1979. This Petition for Writ of Certiorari will be timely filed on or before December 31, 1979.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Is the constitutional guarantee of due process of law violated by an anti-theft provision of the Illinois Vehicle Code whereby a person transgressing its terms can be imprisoned for up to three years with no proof of criminal intent on his part?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

Ch. 95½, Sec. 4-105(e) (Ill. Rev. Stat. 1977, Volume 2, p. 1333) provides:

> It is a violation of this Chapter for any bank, currency exchange, finance company, new or used vehicle dealer, or any other person to: . . . (e) Use a false or fictitious name or address, or make a material false statement, or fail to disclose a security interest, or conceal any other material fact on any application for a certificate of title, junking certificate, salvage certificate, any application for vehicle registration, or any application for license plates or registration sticker;

The 14th Amendment to the Constitution of the United States provides in material part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

STATEMENT OF THE CASE

This is a case of first impression in Illinois. The petitioner is a used-car dealer with his place of business at 7246 South Stony Island, Chicago, Illinois. On November 23, 1977 he appeared at the desk of Gladys Hoagland at the Secretary of State's office in Springfield, Illinois. He wanted to apply for a certificate of title for a 1977 Pontiac automobile. Ms. Hoagland checked the records on the car, and determined that the last title was a salvage title issued to Motors Insurance Company. A salvage certificate is issued only when a car is lost, destroyed, or stolen. She then took the petitioner and introduced him to the supervisor of the title division, Shirley Caldwell. She introduced the petitioner as "Mr. D.". Ms. Caldwell had seen the petitioner a few times before when he had done business on her floor, but she had never talked to him before, (R. 38).[1]

Ms. Hoagland then handed Ms. Caldwell four documents relating to the automobile: a duplicate application for title; a microfilm copy of the salvage certificate; the petitioner's title only application; and the petitioner's salvage affidavit. Ms. Caldwell then threw away the application for duplicate title, as it was inappropriate because title to the car was in salvage.

Ms. Caldwell then filled out an application for a certificate of salvage on the Pontiac, and labeled it, "Duplicate" (R. C55), R. 46. She then cancelled the microfilm "Duplicate Salvage Certificate". She gave the salvage certificate she had just filled out to the petitioner and asked him to sign it. He signed it "J. Dags" and gave it back to her. Ms. Caldwell knew at the

[1] All transcript references are to the Report of Proceedings of July 18, 1978 in the trial court.

time that Mr. Delay was not J. Dags. She then wrote on the salvage certificate "cancelled for title only" (R. C55), R. 48. On the basis of the salvage affidavit (R. C56), she then issued new title to the Pontiac in the name of the petitioner's business, "Mr. D's Auto Sales", (R. C16), R. 48. During this transaction, Ms. Caldwell assumed that the petitioner was an agent of the title holder insurance company, although the defendant never held himself out to be such.

On February 7, 1978 the Petitioner was charged with the crimes of forgery (ch. 38, Sec. 17-3(a)(1), Ill. Rev. Stat. 1977) and use of a false name on a salvage certificate application (ch. 95½, Sec. 4-105(e)), both charges resulting from his signing "J. Dags" (R. C1 & 2). At trial, after the State's case, the Judge directed verdict in the Petitioner's favor on the forgery count, but refused to do so on the other count (R. 66, 67).

Testifying in his own defense, the Petitioner stated that he had bought the Pontiac in question from one John Bishop who had given him the salvage title to the Pontiac, and power of attorney regarding it. The Petitioner said that he had given this power of attorney, as well as a receipt of purchase, to Gladys Hoagland at the Secretary of State's office on November 23, 1977.

The Petitioner also said that he had been a used car dealer for more than three years, and that he had bought a number of cars from individuals who had been given salvage titles from insurance companies (R. 69, 94). During that time the Petitioner averaged 18 to 20 title transfers per month. As regards his signing the name "J. Dags," he testified that Shirley Caldwell told him to sign it that way (R. 94). He signed it in the manner set out on the microfilm copy of the salvage certificate (App. p. 5a).

HOW FEDERAL QUESTION IS PRESENTED

At the completion of the State's case the Petitioner's attorney argued for a directed verdict on the grounds that the charge was a felony, for which the Petitioner could be imprisoned, "and because of that, criminal intent must be necessary at the time the person uses the false name" (R. 62). The Petitioner's attorney argued at length that there was "no evidence at all of criminal intent in the State's case in chief" (R. 63 and R. 60-64). The court ruled against Petitioner's motion on the ground that the State did not have to show a criminal intent (R. 66).

Later at the conference on jury instructions defense counsel requested that the court instruct the jury that the State must prove that the Petitioner acted with criminal intent (R. 100, App. p. 5a). This request was refused (R. 101). The jury found the Petitioner guilty and he was sentenced to a 2 year term of imprisonment, App. p. 5a.

In his motion for a new trial Petitioner argued that he had been denied his right to due process of law in that "the Court erred in not allowing the Defendant to tender an instruction including the element of criminal intent, the Jury thus being compelled to reason that the crime could be committed in innocence." (R. C139). The Court denied this motion and the Petitioner appealed.

In the Illinois Appellate Court the Petitioner argued in his brief and at oral argument that the refusal of the trial court "to instruct the jury that it must find that the defendant acted with criminal intent in order to convict him . . . violated the defendant's right to due process of

law, as guaranteed him by the Illinois and United States Constitutions." (Petitioner's Appellate Court brief pp. 2, 13). Concomitantly, the Petitioner argued that to construe the statute in question to be an absolute liability statute would cause it to fail the test of constitutionality on grounds of due process (Petitioner's Appellate Court brief, pp. 2, 10-13). This position was also pressed at oral argument in the Appellate Court. In its decision the Illinois Appellate Court held that the statute in question was an absolute liability statute, and consequently, no proof of criminal intent was required (App. p. 6a). The Illinois Appellate Court did not discuss any of the constitutional issues in its opinion.

The Petitioner then filed his petition for leave to appeal in the Illinois Supreme Court. In that petition he reiterated the above-mentioned constitutional arguments that he had made in the Illinois Appellate Court, (Petitioner's petition for leave to appeal in the Illinois Supreme Court, esp. pp. 1-5, 18-20). The Petitioner again asserted that "the petitioner's conviction under ch. 95½, Sec. 4-105(e) (Ill. Rev. Stat.), in the absence of any showing of wrongful intent, violates the Petitioner's due process rights . . . guaranteed him by Article I, Sec. 2 of the Illinois Constitution and the Fourteenth Amendment to the United States Constitution." (Petition for Leave to Appeal, p. 3). The Illinois Supreme Court denied Petitioner's petition for leave to appeal, App. p. 10a.

REASONS FOR GRANTING THE WRIT

The Illinois Supreme Court and the Illinois Appellate Court have decided a federal question of substance which has not heretofore been specifically determined by this Court. Furthermore, they have decided it in a way that is probably not in accord with applicable decisions of this Court. The question is whether the constitutional guarantee of due process of law is violated by an anti-theft provision of the Illinois Vehicle Code whereby a person transgressing its terms can be imprisoned for up to three years with no proof of criminal intent on his part.

The statute in question would appear to be unconstitutional in view of the principles enunciated by this Court in *Morissette v. United States*, 342 U.S. 246 (1952) and *United States v. United States Gypsum Co.*, ... U.S. ....., 98 S.Ct. 2864 (1978). In *Morissette* this Court held that the crime of conversion required proof of *mens rea* or criminal intent.

> The Government asks us by a feat of construction radically to change the weights and balances in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries. Such a manifest impairment of the immunities of the individual should not be extended to common-law crimes on judicial initiative. *United States v. Morissette, supra*, p. 263.

In *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873 (1978), the Court spoke of *Morissette* as follows:

> Indeed, the holding in *Morissette* can be fairly read as establishing, at least with regard to crimes having their origin in the common law, an interpretative presumption that *mens rea* is required.

The statute in question is under Chapter 4 of the Illinois Vehicle Code, ch. 95½, 1977, p. 1333, Ill. Rev. Stat. Chapter 4 is entitled " ANTI-THEFT LAWS AND ABANDONED VEHICLES." More specifically it is under Article I of Chapter 4 which is entitled "ANTI-THEFT LAWS". Coming under headings of this nature it must be presumed that said statute contains a larceny-type offense of which the Court in *Morissette* spoke so eloquently:

> Stealing, larceny, and its variants and equivalents, were among the earliest offenses known to the law that existed before legislation; they are invasions of rights of property which stir a sense of insecurity in the whole community and arouse public demand for retribution, the penalty is high and, when a sufficient amount is involved, the infamy is that of a felony, which, said Maitland, is "* * * as bad a word as you can give to man or thing." State courts of last resort, on whom fall the heaviest burden of interpreting criminal law in this country, have consistently retained the requirement of intent in larceny-type offenses. If any state has deviated, the exception has neither been called to our attention nor disclosed by our research. 342 U.S. at 260-261.

While the decision of the Court in *Morissette* was not based on constitutional grounds, it clearly implies that proof of criminal intent is constitutionally required in larceny-type offenses.

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in

> freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory 'But I didn't mean to,' and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution. Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a vicious will." *Morissette v. United States*, 342 U.S. 246, 250-251.

A concept so central to our system of law certainly has constitutional protection to some degree. Thus, insofar as the statute in question constitutes a larceny-type offense it violates due process because of its failure to require proof of criminal intent, see *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873-2874.

Insofar as the statute in question could be considered to constitute a public welfare offense as opposed to a larceny-type offense it raises important constitutional questions. As this Court stated in *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873, 2874 (1978).

> While strict liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements, see *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 30 S.Ct. 663, 54 L.Ed. 930 (1910), the limited circumstances in which Congress has created and this Court has recognized such offenses, see e. g., *United States v. Balint*, 258 U.S. 250, 42 S.Ct. 301, 66 L.Ed. 604; *United States v. Behrman*, 258 U.S. 280, 42 S.Ct. 303, 55 L.Ed. 619; *United States v. Dotterweich*, 320 U.S. 277, 64 S.Ct. 134, 88 L.Ed. 48; *United States v. Freed*, 401 U.S. 601, 91 S.Ct. 1112, 28 L.Ed.2d 356, attest to their generally disfavored status. See generally ALI Model Penal Code § 2.05 comments, at 140 (Tent. 4th Draft 1955); LaFave & Scott, Criminal Law 222-223 (1972).

In his concurring opinion in *United States v. Freed*, 401 U.S. 601, 613 (1971) Justice Brennan, noted that ". . .the existence of a *mens rea* is the rule of, rather than the exception to the principles of Anglo-American criminal jurisprudence." He then went on to discuss situations where strict criminal liability might be imposed.

> The situations in which strict liability may be imposed were stated by Judge, now Mr. Justice, Blackmun: "[W]here a federal criminal statute omits mention of intent and where it seems to involve what is basically a matter of policy, where the standard imposed is, under the circumstances, reasonable and adherence thereto properly expected of a person, where the penalty is relatively small, where conviction does not gravely besmirch, where the statutory crime is not one taken over from the common law, and where congressional purpose is supporting, the statute can be construed as one not requiring criminal intent." *Holdridge v. United States*, 282 F.2d 302, 310 (CA 8, 1960). (*United States v. Freed*, supra, p. 613. See also *United States v. Morissette*, 342 U.S. 246, 255, 256).

The issue of the common law origin of the statute involved has already been discussed. But it is now appropriate to consider the statute's relationship to the other standards mentioned by Judge Blackmun in *Holdridge, supra*, and by Justice Jackson in *Morissette, supra*, pp. 255, 256.

The penalty in the instant case is certainly not relatively small. A sentence of two years imprisonment for accidentally signing the wrong name to an auto-

mobile certificate is strong punishment indeed.[2] A person convicted under the statute can be sentenced to up to 3 years imprisonment, see ch. 95½, Sec. 4-108(b) and ch. 38, Sec. 1005-8-1(b)(5) (Ill. Rev. Stat. 1977).

As Justice Frankfurter stated in his dissenting opinion in *Lambert v. California*, 355 U.S. 225, 231 (1957).

> Then, too, a cruelly disproportionate relation between what the law requires and the sanction for its disobedience may constitute a violation of the Eighth Amendment as a cruel and unusual punishment, and, in respect to the States, even offend the Due Process Clause of the Fourteenth Amendment.

Petitioner submits that such is the case herein.

A felony conviction, in and of itself, gravely besmirches a person. A felony is, by definition, a serious crime. And felons are rarely, if ever, looked upon as persons who acted with innocent intent in the commission of the felony. Clearly, an absolute liability felony is an anomaly.

One must also question the reasonableness of the statute in question as an absolute liability statute. It is not an unknown practice in Illinois for one person to authorize another to sign his name to a title application, to a license plate application, or to any of the other applications mentioned in the statute in question.

[2] One of the ironies of the instant case is that the petitioner was charged with two crimes for the single act of signing the name, J. Dags, to the salvage certificate, namely, forgery, and use of a false name. On the former he received a directed verdict in his favor because the court found no evidence that he acted with any intent to defraud (R. 66, 67). On the latter he was found guilty and was sentenced to 2 years in prison, presumably, because he acted without any intent to defraud. Innocent intent should not be so severely punished.

Spouses so authorize each other. Clients authorize attorneys, and so on. Such authorizations are common at the Secretary of State's office and the supervisor of the Title Division assumed that the petitioner was authorized to sign the name "J. Dags" (App. p. 4a).[3] Both the trial court and the appellate court were much concerned with the issue of proper authorization (App. pp. 4a, 5a).

However, the statute in question makes no provision for a person to authorize another to sign his name. Under the terms of the statute all persons signing the names of others, even if authorized to do, are using false names and are therefore committing a felony. Thus, to provide a standard of absolute criminal liability under such circumstances is unreasonable.

Also, insofar as the purpose of the statute is to prevent the concealment of correct information on title applications, the statute is unreasonable as applied to the petitioner's conduct. The information contained on the salvage certificate that the Petitioner signed (R. C55) is exactly the same as the information on the microfilm copy of the prior salvage certificate (R. C54). In fact, Ms. Caldwell who filled out the salvage certificate which the Petitioner signed got all the information off of the microfilm "Duplicate Salvage Certificate" (App. p. 4a). Thus, the material facts are identical and correct on both certificates. There having been no concealment of any material fact, Petitioner submits that it is un-

[3] The supervisor testified that she knew that the petitioner was not J. Dags (App. p. 4a).

reasonable to imprison him for two years simply for accidentally signing the wrong name.[4]

By any of the standards set forth in *Morissette v. United States*, 342 U.S. 246, 255, 256, in *Holdridge v. United States*, 282 F.2d 302, 310 (CA 8, 1960) and mentioned approvingly by Justice Brennan in his concurring opinion in *United States v. Freed*, 401 U.S. 601, 613 (1971), the statute in question fails as an absolute liability statute.

In this Court's opinion in *United States v. Dotterweich*, 320 U.S. 277, 284 (1943) Justice Frankfurter in upholding an absolute liability statute involving a misdemeanor stated "Hardship there doubtless may be under a statute which thus penalizes the transaction though consciousness of wrongdoing be totally wanting."

In juxtaposition to that is Chief Justice Burger's statement in this Court's opinion in *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873 (1978).

> Although Blackstone's requisite "vicious will" has been replaced by more sophisticated and less colorful characterizations of the mental state required to support criminality, see ALI Model Penal Code § 2.02 (Prop Official Draft 1962), intent generally remains an indispensable element of a criminal offense. This is as true in a sophisticated criminal antitrust case as in one involving any other criminal offense.

[4] Another irony of the instant case is that it did not really matter whose name the petitioner signed to the salvage certificate. Since Ms. Caldwell assumed that he was an agent of the title holder insurance company, he could even have signed his own name (App. p. 4a). Had he done so, he could not have been charged with signing a false name, and the result would have been the same.

Besides, the new title to the automobile was issued to the petitioner, not on the basis of the salvage certificate, but rather on the basis of the petitioner's title only application (App. p. 4a, R. C55, and R. 48). There were no charges preferred against the petitioner for signing that application. Whatever name the petitioner signed to the salvage certificate was irrelevant to his obtaining a new title to the car.

To allow the Petitioner to be imprisoned for two years, even though there was no proof that he acted with any criminal intent, undoubtedly creates a severe hardship for him. It does not seem fair or right that such a hardship should be imposed on a man who may well have acted innocently.[5]

Just as a sophisticated criminal anti-trust case requires proof of criminal intent, so too should the felony anti-theft provision involved herein. Petitioner submits that insofar as the statute in question is an absolute liability statute, it deprives him of his liberty without due process of law.

Accordingly, Petitioner respectfully submits that this Court should issue its Writ of Certiorari in order that it may decide this important federal question.

[5] Though the Appellate Court's decision herein was based on holding that a *mens rea* was not necessary (App. p. 6a), the Court implied that, because the petitioner knew that he was signing a name other than his own (and, therefore, a false name) to the salvage certificate, said knowledge constituted *scienter*, or *mens rea* (App. pp. 3a, 6a, 9a.). However, *scienter*, or *mens rea*, is not the knowledge of what one is doing (which all men in the state of consciousness possess), but rather, the knowledge that what one is doing is wrong (i.e., contrary to the law). The Appellate Court herein is under the mistaken notion that the former constitutes *mens rea*. See *Morissette v. United States*, 342 U.S. 246, 270, 271, 274 (1952) for an excellent discussion of this important distinction.

Likewise, though Justice Green of the Court below thought otherwise (App. p. 9a), *Morissette* points out that the question of whether a defendant acted with criminal intent or innocent intent is for the jury, not the Court, to decide. (See *Morissette, supra*, pp. 274, 275).

CONCLUSION

For the reasons severally and collectively assigned here, it is respectfully prayed that this Court issue its Writ of Certiorari to review the judgments of the Illinois Supreme Court and the Illinois Appellate Court.

Respectfully submitted,

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APPENDIX 1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT SANGAMON COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

No. 78-CF-25 *v.*

WILLIAM L. DELAY,

Defendant.

JUDGMENT AND SENTENCE

Now come THE PEOPLE OF THE STATE OF ILLINOIS, by RON STONE, State's Attorney of SANGAMON County, and the defendant, in person and by counsel, MICHAEL METNICK AND MARK LIEBERMAN, and now neither the defendant nor defendant's counsel saying anything further why the judgment of the court should not now be pronounced against said defendant on the VERDICT of guilty heretofore entered to the charge in this cause;

Therefore, it is ordered and adjudged by the court that said defendant is guilty of the crime of OFFENSE RELATING TO TITLES AND REGISTRATIONS as THE MANNER CHARGED IN THE INFORMATION.

The court finds the age of said defendant to be 37 years.

The court having heard the evidence on the charge, if any received, and having heard and received evidence, if any, as to the moral character, life, family, occupation,

and criminal record of the defendant, and having considered such evidence in aggravation and mitigation of the offense, and the defendant having nothing further to say, the court hereby sentences said defendant to imprisonment in the ILLINOIS STATE DEPARTMENT OF CORRECTIONS, ADULT DIVISION and fixes the term of imprisonment at 2 (TWO) YEARS.

It is further ordered and adjudged that the defendant be taken from the bar of this court to the common jail of said county, and from there be taken by the sheriff of said county to the ILLINOIS STATE DEPARTMENT OF CORRECTIONS, ADULT DIVISION and be delivered to the Department of Public Safety, and said Department of Public Safety is hereby commanded to confine the defendant in said institution for the term above fixed, or until discharged by due process of law.

It is further ordered that said defendant pay the costs of these proceedings and that a mittimus be issued and executed without delay.

ENTER August 29, 1978 /s/ SIMON L. FRIEDMAN
(Judge of the Circuit Court)

APPENDIX 2

STATE OF ILLINOIS
APPELLATE COURT—FOURTH DISTRICT

General No. 15198 Agenda No. 79-85

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

WILLIAM L. DELAY,

Defendant-Appellant.

Appeal from Circuit Court
Sangamon County, No. 78-CF-25.

Honorable Simon L. Friedman,
Circuit Judge, Presiding.

Mr. JUSTICE MILLS delivered the opinion of the court:

Is one permitted to sign someone else's name to a document and then deny scienter to do the thing done?

Of course not.

The conviction is affirmed.

Delay applied for a certificate of title for a 1977 Pontiac automobile at the Secretary of State's office in Springfield. An employee of the office, Gladys Hoagland, determined that the last title of record for the

automobile was a salvage title issued to Motors Insurance Company. (A salvage certificate is issued only when a car is lost, destroyed, or stolen.) Hoagland then took the defendant to the supervisor of the title division, Shirley Caldwell, and introduced the defendant to Caldwell as "Mr. D."

Hoagland handed Caldwell four documents relating to the automobile: a duplicate application for title; a copy of the salvage certificate; defendant's title only application; and defendant's salvage affidavit. Caldwell discarded the application for duplicate title, because it was inapplicable since the car was in salvage. Caldwell then filled out an application for a certificate of salvage on the automobile and cancelled the microfilm "Duplicate Salvage Certificate." Caldwell then gave the application she had just filled out to the defendant and asked him to sign it. The defendant then signed the application "J. Dags" and returned it to her.

Caldwell assumed that the defendant was an agent of the title holder insurance company, although the defendant never specifically held himself out to be such. During cross-examination, Caldwell stated that she knew defendant was not J. Dags. No power of attorney was presented to Caldwell and Caldwell denied that she told the defendant to sign the name of any other person to the salvage certificate application. After the defendant returned the application to Caldwell, she then issued new title to the automobile in the name of defendant's business "Mr. D's Auto Sales."

(It was stipulated by the parties that Joan Dags was an agent of Motors Insurance Company and had authority to sign title transfers. Dags did not authorize or give permission to the defendant to sign her name.)

Defendant testified that he had purchased the automobile in question from John Bishop, who had allegedly given him a salvage title to the car and the power of attorney. According to the defendant, Bishop showed that he had bought the car from Motors Insurance Company. The defendant stated that he gave this power of attorney to Hoagland at the Secretary of State's office and because of this alleged power of attorney, Delay testified that he believed the car was his. He signed the name "J. Dags" because Caldwell told him to sign the form and he signed it in the manner set out on the microfilm copy of the salvage certificate. (The defendant had three years' experience with title applications involving an average of 18 to 20 transfers per month.)

Delay was charged with using a false name on a salvage certificate application in violation of section 4-105(e) of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95½, par. 4-105(e)). (He was also charged with forgery, but the trial court directed a verdict in favor of defendant on that offense.) During the instructions conference, defense counsel requested that the court instruct the jury that the State must prove that the defendant acted with criminal intent. This request was refused, Delay was convicted, he was sentenced to a 2-year term of imprisonment, and this appeal ensued.

The sole issue on appeal is whether criminal intent or some other mental state is a requisite element of the offense of using a false name on a vehicle registration or title application. The defendant relies upon section 4-9 of the Criminal Code (Ill. Rev. Stat. 1977, ch. 38, par. 4-9), which in essence provides that absolute liability may be imposed "if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $500, or the statute defining the offense clearly indicates a

legislative purpose to impose absolute liability * * * ." A violation of section 4-105(e) of the Vehicle Code (using a false name) is a Class 4 felony. Ill. Rev. Stat. 1977, ch. 95½, par 4-108(b).

Initially—and quite aside from the absolute liability aspect of the statute—it seems both rudimentary and patently clear to us that a person simply is not permitted to sign someone else's name to a document and then deny knowledge of the falsity of the act or deny he possessed the intent to do the deed done. Such posture does violence to simple logic.

Now to the issue posited. The Illinois Supreme Court, in *People v. Valley Steel Products Co.* (1978), 71 Ill. 2d 408, 375 N.E.2d 1297, recently held that section 4-9 of the Criminal Code is applicable to the penalty provisions of other statutes which are not a part of the Criminal Code. The court, in that case, held that the provision of the Motor Fuel Tax Law imposing a felony penalty for its violation did not exhibit a clear legislative intent to create absolute liability.

We conclude, however, that section 4-105 of the Vehicle Code does indicate a clear legislative intent to impose absolute liability. We note that, generally, motor vehicle regulations are regarded as absolute liability offenses. (See, *e.g.*, *People v. Strode* (1973), 13 Ill. App. 3d 697, 300 N.E.2d 323; *People v. Van Cura* (1977), 49 Ill. App. 3d 157, 364 N.E.2d 564.) Further, absolute liability has even been imposed for Vehicle Code violations involving felony penalties. See, *e.g.*, *People v. White Brothers Equipment Co.* (1978), 63 Ill. App. 3d 445, 380 N.E.2d 396; *People v. Walker* (1974), 18 Ill. App. 3d 351, 309 N.E.2d 716; *contra*, *People v. Nunn* (1978), 65 Ill. App. 3d 981, 382 N.E.2d 1305.

Beyond this general assumption regarding Vehicle Code offenses, we find the legislative history of section 4-105 to be of even greater importance. Under the 1965 statutes, section 4-103(a)-(d) set forth in substance the offenses listed in subsections (a), (b), (c), and (e) of the present section 4-105. (Ill. Rev. Stat. 1965, ch. 95½, par. 4-103(a)-(d).) Subsection (d) of the 1965 Act, for example, which was the counterpart to section 4-105(e), provided that it was an offense for a person who:

> "(d) *with fraudulent intent* uses a false or fictitious name or address, or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact, in an application * * * ." (Emphasis added.) (Ill. Rev. Stat. 1965, ch. 95½, par. 4-103(d).)

In 1967, this provision was amended and the "fraudulent intent" language was eliminated. (Ill. Rev. Stat. 1967, ch. 95½, par. 4-103.1(e).) That is how section 4-105(e) presently reads.

Where, as a result of an amendment or revision, words are stricken from the statute, it must be concluded that the legislature deliberately intended to change the law (*Town of the City of Champaign v. Overmeyer's, Inc.* (1958), 18 Ill. App. 2d 523, 152 N.E.2d 752.) The inherent implication of the legislature's deletion of the specific mental state requirement is that neither intent nor any other criminal mental state is needed to impose liability under the present section 4-105(e).

Our construction of this statute is further supported by other provisions of section 4-105. For instance, under subsection (c) it is an offense to *possess* a forged title document only if the person *knows* of its forged or altered condition. The retention of "knowledge" as an element of this offense supports the presumption that

the deletion of the fraudulent intent language was not the result of legislative oversight or inadvertence. The absence of similar language concerning a mental state with respect to the present offense implicitly indicates a legislative purpose to impose absolute liability.

Finally, we note that in determining legislative intent, a statute should be construed so as to give effect to every clause. (*Mid-South Chemical Corp. v. Carpentier* (1958), 14 Ill. 2d 514, 153 N.E.2d 72.) To read section 4-105(e) as requiring an element of intent to defraud would render subsection (f) superfluous, for it provides that it is a violation for any person to "[c]*ommit a fraud in connection with any application* under this Act." (Emphasis added.) Ill. Rev. Stat. 1977, ch. 95½, par. 4-105(f).

Defendant has argued that section 4-105(g) indicates a clear legislative intent not to impose absolute liability. We are not persuaded by that argument. Subsection (g) of 4-105 makes it a felony offense for any person to "[w]ilfully violate any provision of Chapter 3 or 4 of this Act [ch. 95½, pars. 3-101 *et seq.*, 4-100 *et seq.*] *unless the violation is otherwise provided for in this Act.*" (Emphasis added.) (Ill. Rev. Stat. 1977, ch. 95½, par. 4-105(g).) The use of a false name, however, is obviously otherwise provided for. Subsection (g) was intended as a catch-all provision and, therefore, cannot be construed as mandating a mental statement requirement of "wilfulness" as to the other offenses specifically provided for in section 4-105.

For these reasons, we conclude that the offense in question is an absolute liability crime and the judgment of the trial court will be affirmed accordingly.

Mr. Justice Green would affirm solely on the basis that defendant's obvious knowledge that he was placing a false name on the certificate application was a sufficient showing of mental state to comply with section 4-3 of the Criminal Code (Ill. Rev. Stat. 1977, ch. 38, par. 4-3). He would therefore hold that the evidence was sufficient to support the conviction and that the trial court properly refused to instruct the jury that criminal intent was a necessary element of the offense.

Judgment affirmed.

GREEN and CRAVEN, JJ, concur.

APPENDIX 3

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, IL 62706
(217) 782-2035

October 1, 1979

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No. 52135—People State of Illinois, respondent, vs. William L. Delay, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court